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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,494	09/16/2003	Daniel J. Simonson	350	2436

7590

02/07/2006

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EXAMINER

BRADEN, SHAWN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/663,494	SIMONSON, DANIEL J.	
	Examiner	Art Unit	
	Shawn M. Braden	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

With respect to claim 5 is rejected under 35 U.S.C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner cannot determine what "other sizes that be become commonly available" will be or what is encompassed with future bag sizes.

Claim 6 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any

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particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fastener and, accordingly, the identification/description is indefinite.

3. Claim 11 recites the limitation "said upper ramp*" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,5,6 rejected under 35 U.S.C. 102(b) as being anticipated by Young (USPN 6,131,759).

With respect to claim 1, Young shows a trash container with a side substantially flat (fig. 3), means for attaching a standard bag (col.1 ln. 67) by a hold down connection between section (3) and (2), a sweeping ramp (6), and means for attaching a ramp (6) to a trash container (3).

With respect to claim 2, Young discloses various light plastics, such as polyethylene, polypropylene, or any other polymers that are readily available for injection molding (col. 4 ln. 50-54).

With respect to claim 3, Young shows embodiments that comprise a substantially semicircular shape (figs 10-26).

With respect to claim 5, Young discloses standard yard bags, weather they be of the forty gallon size, or the like, with at dimensions of the bagging means being designed so that it can be fabricated of differing sizes in order to fit within and accommodate the type of yard bags normally used by the home owner (col. 1 ln. 67- col. 2 ln. 4), this statement encompasses gallon sizes of 4,13,20,33,39 , and other sizes that become commonly available.

With respect to claim 6, Young shows a hold down connection between section (3) and (2), a bag is inserted into Young's container at the upper edge of the cylindrical portion is provided and integral bead, the bag is stretched over that bead and section (3) fits over bag and cylindrical portion (col. 3 ln 66- col. 4 ln 5).

6. Claims 1,2,3,6,8,9,11 rejected under 35 U.S.C. 102(b) as being anticipated by Cross (USPN 4,312,531).

With respect to claim 1, Cross shows a trash container with a side substantially flat (34), means for attaching a standard bag (fig.3) by a hold down connection between section (22) and (38), a sweeping ramp (34), and means for attaching a ramp (32) to a trash container (38).

With respect to claim 2, Cross discloses light plastics, such as high density polyethylene (col. 3 ln.47).

With respect to claim 3, Cross shows a substantially semicircular shape (fig.1).
With respect to claim 6, Cross shows means for attaching the bag within the container to a hold down connection between flange (22) and the top rim of (38).

With respect to claim 8, Cross shows a collecting arrangement for a trash container, which surrounds a standard replaceable trash bag (40), comprising; a sweeping ramp (34), means for adjusting said ramp in width, by overlapping edges (22), so as to fit into a variety of different sizes of trash container, Cross also shows means for mounting said ramp by using the upper flanges (22) which are considered to have the same structure and recitation as an insert ring with multiple hasps.

With respect to claim 9, Cross's means for adjusting width, by overlapping edges (22), shows overlapping sliding material sections.

With respect to claim 11, Cross's flange (22) meets the structure and recitation as spring clips.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Young (USPN 6,131,759) in view of Pravettone (USPN 4,357,728).

Young discloses the invention substantially as claimed. However Young does not disclose a pair of wheels.

Pravettone teaches wheels in the analogous art of yard waste containers for the purpose of making the container easier to transport.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the wheels of Pravettone to the container of Young in order to make the container easier to transport.

9. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Young (USPN 6,131,759) in view of Mensch (USPN 6,915,921).

Young discloses the invention substantially as claimed. The lower edge of Young's funnel (203) has the structure and recitation of applicant's insert ring. However Young does not disclose multiple hasps.

Mensch discloses multiple hasps (28) in the analogous field of refuse containers for the purpose of holding the dust pan or "ramp" to the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add multiple hasps to the union of members (203) and (202) in (fig. 13) of Young's invention in order to hold the ramp to the container.

Allowable Subject Matter


10. Claims 10,12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB


JES F. PASCUA
PRIMARY EXAMINER

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